

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

RUSSELL DEFREITAS,

also known as "Mohammed,"

ABDUL KADIR,

also known as "Aubrey Michael Seaforth,"

AND ABDEL NUR,

also known as "Compton Eversley,"

Defendants.
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SUMMARY ORDER

07-CR-543 (DLI)(SMG)

DORA L. IRIZARRY, United States District Judge:

By Memorandum & Order dated June 3, 2010, the court reserved decision as to a portion of the government's motion to admit certain evidence against defendant Russell Defreitas pursuant to Federal Rule of Evidence 404(b). *See United States v. Defreitas*, 2010 WL 2292194, at *3 (E.D.N.Y. June 3, 2010). Specifically, the court held that it could not evaluate the parties' respective arguments without transcripts of the relevant conversations. *See id.* Both parties subsequently submitted, for the court's review, the transcript of the conversation containing Defreitas' statements about a possible attack on a Jewish school.¹ Defreitas stated that he opposed the introduction of only the latter portion of this conversation.²

¹ This transcript is identified as 1D-40 Session 7, recorded on January 9, 2007. (*See generally* Docket Entry No. 290; Docket Entry No. 291, Ex. C.) In its submission, the government also proffered that it no longer intends to introduce evidence relating to Defreitas' travelling under false names, transporting of weapons, or committing welfare fraud, rendering that portion of the government's original motion moot. (*See* Docket Entry No. 290, at 1.)

² (*See* Docket Entry No. 291, at 2.) Defreitas also submitted two other transcripts containing portions of separate conversations that he wished to preclude. (*See* Docket Entry No. 291, Exs. A, B.) As the government has not proffered that it intends to introduce these conversations, and has furthermore had no opportunity to respond, Defreitas' request is denied without prejudice.

As an initial matter, having reviewed the disputed portion of this transcript, the court concludes that it is not manifestly clear that the evidence contained therein is “intrinsic proof of the charged crime,” and accordingly proceeds with a Rule 404(b) analysis. *See United States v. Nektalov*, 325 F. Supp. 2d 367, 372 (S.D.N.Y. 2004). Under this analysis, the government has demonstrated both a proper purpose for the proffered evidence, and its relevance to a disputed trial issue. However, after carefully reviewing the disputed portion of the transcript in question, the court concludes that the risk of undue prejudice substantially outweighs its limited probative value. *See* FED. R. EVID. 403. Regarding the latter, Defreitas’ motive, preparation, and plan for attacking JFK may all be demonstrated through other admissible evidence. The risk of undue prejudice, in contrast, is high; evidence of Defreitas’ feelings of animus towards those of the Jewish faith, and discussions concerning a possible attack on a Jewish school, present a strong possibility of “unduly inflame[ing] the passion of the jury, confus[ing] the issues before the jury, [and] inappropriately lead[ing] the jury to convict on the basis of conduct not at issue in the trial.” *United States v. Quattrone*, 441 F.3d 153, 186 (2d Cir. 2006). Accordingly, the government’s motion to admit certain evidence is DENIED as to the portion of the conversation contained between 00:31:22 and 00:33:00 of the transcript.

SO ORDERED.

Dated: Brooklyn, New York
June 24, 2010

/s/

DORA L. IRIZARRY
United States District Judge